

ESTTA Tracking number: **ESTTA242650**

Filing date: **10/14/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92047013
Party	Plaintiff NeTrack, Inc.
Correspondence Address	Carl Oppedahl Oppedahl Patent Law Firm LLC P.O. Box 4850 Frisco, CO 80443-4850 UNITED STATES docket-oppedahl@oppedahl.com
Submission	Plaintiff's Notice of Reliance
Filer's Name	Terrence M. Wyles
Filer's e-mail	docket-oppedahl@oppedahl.com
Signature	/s/
Date	10/14/2008
Attachments	2008-10-14-DRAFT-NTer-i007-Notice-of-Reliance-Interrogatory-Answers.pdf (4 pages)(27745 bytes) Exhibit-E-2000-08-17-Garver-TM-Application.pdf (7 pages)(127523 bytes) Exhibit-F-2000-06-02-Garver-Application-on-Previous-TM-Filing.pdf (8 pages)(231899 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Registration No. 3,064,820

Mark: NETTRAK

Registered March 7, 2006

Netrack, Inc., Petitioner)	
)	
v.)	Cancellation No. 92047013
)	
Internet FX, Inc., Registrant)	

Commissioner for Trademarks

P.O. Box 1451

Alexandria, VA 22313-1451

NOTICE OF RELIANCE

Pursuant to TBMP § 704.02, the Petitioner hereby notifies the Board and the Registrant that, in support of the Petitioner's Cancellation Action, the Petitioner is relying on the following Registrant answers to the First Set of Interrogatories from the Petitioner, as well as each related and supporting Exhibit noted below. Accordingly, the Petitioner introduces said answers and Exhibits and respectfully requests that said answers and Exhibits be admitted into evidence:

INTEROGATORY 1: State the basis for Registrant's claim that it first used its mark on or before January 10, 2000.

Registrant Answer: Registrant responds that its claim that it first used its NETTRAK mark on or before January 10, 2000 is based in part on written statements by the President of Applicant corporation, Bernard C. Garver III, dated June 2, 2000 and August 17, 2004, and submitted with application filings for the NETTRAK mark.

The Petitioner introduces Exhibit E, which is a copy of a written statement by Bernard C. Garver III (“Chris Garver”) dated August 17, 2004 and submitted as part of the Registrant’s initial application for the mark NETTRAK.

Additionally, the Petitioner introduces Exhibit F, which is a copy of the electronically-signed and later abandoned trademark application by Bernard C. Garver III, dated June 2, 2000. Said electronic records of this abandoned application are shown as not complete by the USPTO website, and the Petitioner has requested that the USPTO complete the scanning of the file record for this abandoned application. The Petitioner intends to introduce said fully scanned record before the close of the testimony period.

INTEROGATORY 2: State the basis for Registrant’s claim that it used its mark in commerce on or before February 1, 2000.

Registrant Answer: Registrant responds that its claim that it first used its NETTRAK mark in commerce on or before February 1, 2000 is based in part on written statements by the President of Applicant corporation, Bernard C. Garver III, dated June 2, 2000 and August 17, 2004, and submitted with application filings for the NETTRAK mark.

The Petitioner reasserts the introduction of Exhibit E, which is a copy of a written statement by Bernard C. Garver III (“Chris Garver”) dated August 17, 2004 and submitted as part of the Registrant’s initial application for the mark NETTRAK.

Additionally, the Petitioner reasserts the introduction of Exhibit F, which is a copy of the electronically-signed and later abandoned trademark application by Bernard C. Garver III, dated June 2, 2000. Said electronic records of this abandoned application are shown as not complete by the USPTO website, and the Petitioner has requested that the USPTO complete the scanning of the file record for this abandoned application. The Petitioner intends to introduce said fully

scanned record before the close of the testimony period.

INTEROGATORY 9: Identify all documents consulted, referred to or relied on by Registrant in responding to the foregoing interrogatories.

Registrant Answer: Registrant responded by referring the Petitioner to Document Nos. NET 00001 through NET 00310, and other unspecified documents, to be produced only after the entry of an appropriate Protective Order, subject to Registrant's general objections and pursuant to FRCP 33(d).

The Petitioner hereby asserts its intent to rely on said documents, once said documents are produced by the Registrant. Said documents are subject to introduction as Exhibits for admission as evidence once said documents are obtained.

WHEREFORE, the Petitioner respectfully requests that the interrogatory answers provided herein and all associated above-described be entered into evidence.

Respectfully submitted,

/s/
Terrence M. Wyles, Attorney
Colorado Reg. #39799

Attorneys for Petitioner: Carl Oppedahl
Jessica L. Olson
Terrence M. Wyles
P.O. Box 4850
Frisco, CO 80443-4850
Tel: +1 970 468-8600
Fax: +1 970 692-2203

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing NOTICE OF RELIANCE on Registrant's interrogatory answers and associated Exhibits was deposited on October 15, 2008 with the United States Post Office, First Class postage prepaid, and addressed to the Registrant's Correspondent as follows:

SUSAN E. HOLLANDER & BRITT L. ANDERSON
MANATT, PHELPS & PHILLIPS, LLP
1001 PAGE MILL ROAD, BLDG. 2
PALO ALTO, CA 94304

/s/
Terrence M. Wyles, Attorney
Colorado Reg. #39799

Attorneys for Petitioner: Carl Oppedahl
Jessica L. Olson
Terrence M. Wyles
P.O. Box 4850
Frisco, CO 80443-4850
Tel: +1 970 468-8600
Fax: +1 970 692-2203

EXHIBIT E

APPLICANT:

Internet FX, Inc.

ADDRESS:

19202 Foxtree Lane
Houston, Texas 77094

DATE OF FIRST USE
IN COMMERCE:

January 10, 2000

DATE OF FIRST USE
IN INTERSTATE COMMERCE:

February 1, 2000



08-23-2004

NETTRAK

U.S. Patent & TMOfo/TM Mail Rcpt Dt. #87

Attorney: Richard J. Tholstrup
Registry No. 40,838

Address 440 Louisiana, Suite 1750
Houston, Texas 77002

U.S. Patent & TM Ofc/TM



76608800

76608800

TRADEMARK APPLICATION SERIAL NO. _____

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE
FEE RECORD SHEET

08/30/2004 K6IBBONS 00000027 76608800

01 FC:6001

335.00 OP



-174 \$

THE THOLSTRUP LAW FIRM, P.C.
ATTORNEYS AT LAW

WRITER'S ADDRESS
440 LOUISIANA, SUITE 1750
HOUSTON, TEXAS 77002

WRITER'S TELEPHONE
TEL. 713-225-1280
FAX. 713-225-1344

PROCUREMENT AND ENFORCEMENT
OF INTELLECTUAL PROPERTY

PATENT, TRADEMARK,
COPYRIGHT & RELATED MATTERS

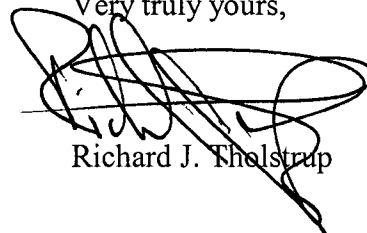
August 17, 2004

Hon. Commissioner of Patents
and Trademarks
Box Trademark Applications
Washington, D.C. 20231

Sir:

Enclosed please find an application for registration of the trademark "NETTRAK" by Inter#net FX, Inc., along with our firm check in the amount of \$335.00. Please contact me at the address above if you have any questions or issues concerning the enclosed materials.

Very truly yours,



Richard J. Tholstrup

enclosure

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

TRADEMARK: NETTRAK

CLASS NO. IC 009

CORPORATE NAME: Internet FX, Inc.

STATE OF INCORPORATION: TEXAS

BUSINESS ADDRESS: 19202 Foxtree Lane
Houston, Texas 77094

SITUS OF CORPORATION: 19202 Foxtree Lane
Houston, Texas 77094

Hon. Commissioner of Patents
and Trademarks
Box Trademark Applications
Washington, D.C. 20231

Sir:

The above-identified Applicant has adopted and is using the trademark shown in the accompanying drawings for the following goods: "Computer software for web based sales lead management for automobile dealerships" and requests that said mark be registered in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. § 1051, *et seq.*, as amended). The trademark was first used in marketing trade goods at least as early as January 10, 2000 and was used in marketing trade goods in interstate commerce at least as early as February 1, 2000, and is now in use in such commerce.

The mark is used on the trade goods (internet web pages) and in advertising, and three specimens showing the mark as actually used are presented herewith.

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

Chris Garver, being duly sworn, states that: he is President of Applicant corporation, Internet FX, Inc., and is authorized to execute this affidavit on behalf of said corporation; that he believes said corporation to be the owner of the mark sought to be registered; that to the best of his knowledge and belief, no other person, firm, corporation or association has the right to use said mark in commerce, either in the identical form or in such near resemblance thereto as to be likely, when applied to the trade goods of such other person, to cause confusion, or to cause mistake, or to deceive; and the facts set forth in the Application are true.

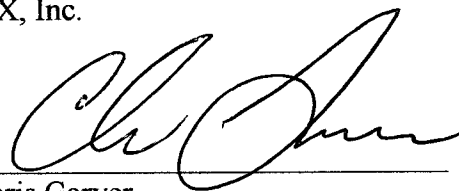
POWER OF ATTORNEY

Applicant appoints the following attorney to prosecute this Application and to transact all business in the Patent and Trademark Office connected therewith:

Richard J. Tholstrup
Registry No. 40,838
440 Louisiana, Suite 1750
Houston, Texas 77002
Tel: 713-225-1280
Fax: 713-225-1344

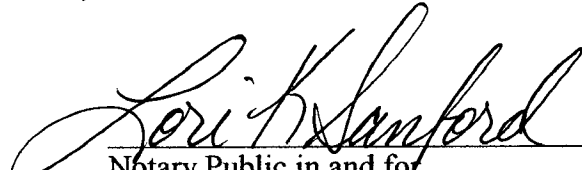
Internet FX, Inc.

By: _____


Chris Garver
President

17th SUBSCRIBED AND SWORN to before me by the said Chris Garver on this, the
day of August, 2004.




Notary Public in and for
The State of Texas

APPLICANT:

Internet FX, Inc.

ADDRESS:

19202 Foxtree Lane
Houston, Texas 77094

DATE OF FIRST USE
IN COMMERCE:

January 10, 2000

DATE OF FIRST USE
IN INTERSTATE COMMERCE:

February 1, 2000

[SPECIMENS]

Attorney: Richard J. Tholstrup
Registry No. 40,838

Address 440 Louisiana, Suite 1750
Houston, Texas 77002

EXHIBIT F

Drawing Page**Serial Number:**

78011048

Applicant:

Internet FX, Inc.
19202 Foxtree Ln.
Houston TX USA 77094

**Date of First Use:**

01/10/2000

Date of First Use in Commerce:

02/01/2000

Goods and Services:

NetTrak is a web based Internet Lead tracking program. NetTrak can be used by any business that generates prospects through their Internet Web Site. NetTrak is a tool for Sales Consultants to track potential customers and a management tool that gives statistical data on Internet Sales leads.

Mark:

NETTRAK



NO OCR



06-02-2000

Internet Transmission Date:

2000/06/02

Serial Number:

78011048

Filing Date:

2000/06/02



TRADEMARK APPLICATION

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE
FEE RECORD SHEET

TOTAL FEES PAID: \$325

RAM SALE NUMBER: 52
RAM ACCOUNTING DATE: 20000605



NO OCR



06-02-2000

<SERIAL NUMBER> 78011048

<FILING DATE> 06/02/2000

<DOCUMENT INFORMATION>

<TRADEMARK/SERVICEMARK APPLICATION>

<VERSION 1.2>

<APPLICANT INFORMATION>

<NAME> Internet FX, Inc.
<STREET> 19202 Foxtree Ln.
<CITY> Houston
<STATE> TX
<COUNTRY> USA
<ZIP/POSTAL CODE> 77094
<TELEPHONE NUMBER> 281-579-0891
<FAX NUMBER> 281-579-0891
<E-MAIL ADDRESS> cgarver@mywebpager.com

<APPLICANT ENTITY INFORMATION>

<CORPORATION: STATE/COUNTRY OF INCORPORATION> Texas

<TRADEMARK/SERVICEMARK INFORMATION>

<MARK> NetTrak

<TYPED FORM> Yes

* Applicant requests registration of the above-identified trademark/service mark in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. §1051 et seq., as amended). *

<BASIS FOR FILING AND GOODS/SERVICES INFORMATION>

<USE IN COMMERCE: SECTION 1(a)> Yes

* Applicant is using or is using through a related company the mark in commerce on or in connection with the below-identified goods/services. (15 U.S.C. §1051(a), as amended.). Applicant attaches one SPECIMEN for each class showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services. *

<SPECIMEN> Yes

<SPECIMEN DESCRIPTION> NetTrak is a web based tracking program for Internet Lead Tracking. The Specimen is a screen shot of a customer data page.

<INTERNATIONAL CLASS NUMBER> 035

<LISTING OF GOODS AND/OR SERVICES> NetTrak is a web based Internet Lead tracking program. NetTrak can be used by any business that generates prospects through their Internet Web Site. NetTrak is a tool for Sales Consultants to track potential customers and a management tool that gives statistical data on Internet Sales leads.

<FIRST USE ANYWHERE DATE> 01/10/2000

<FIRST USE IN COMMERCE DATE> 02/01/2000

<FEE INFORMATION>

<TOTAL FEES PAID> 325.00

<NUMBER OF CLASSES> 1

<SIGNATURE AND OTHER INFORMATION>

* PTO-Application Declaration: The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. §1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true. *

<SIGNATURE> /Bernard C. Garver III/

<DATE> 06/02/2000

<NAME> Bernard C. Garver III

<TITLE> President

<MAILING ADDRESS>

<LINE> Internet FX, Inc.

<LINE> 19202 Foxtree Ln.

<LINE> Houston TX 77094

<CREDIT CARD INFORMATION>

<RAM SALE NUMBER> 52

<RAM ACCOUNTING DATE> 20000605

<SERIAL NUMBER INFORMATION>

<SERIAL NUMBER> 78/011048

<INTERNET TRANSMISSION DATE> Friday, 06-02-2000 18:12:40 EDT

<TEAS STAMP>

USPTO-21662158120-20000602181215562-78/011048-

121991eb4d3e3e49000200bebe68ed61d85-CC-52-20000602180315562

562

ORIGINAL SPECIMEN

Internet Transmission Date:

2000/06/02

Filing Date:

2000/06/02

Serial Number:

78011048



SQL Lead Tracking Program
Customer Information Page

Sterling McCall Toyota Lead Online Program Microsoft Internet Explorer preview

File Edit View Favorites Tools Help Address Links

GROUP: AUTOMOTIVE INC
Sterling McCall TOYOTA

Darren Schaefer
Nettrak
by mywebpage.com

Appointments Search Statistics Manual Input Maintenance Check Email

Salesperson: [Dropdown] Inquiry Date 05/25/2000 Time 10:32:40
Status: [Dropdown] Lead Source: AutoByTel
Print This Page

Appointment: [Dropdown] [Dropdown] [Dropdown] [Dropdown] [Dropdown] [Dropdown]

Name: [Text] Mr. [Text] Ms. [Text] [Text]
Address: [Text] [Text] [Text] [Text] [Text] [Text]
City: [Text] State: [Text] Zipcode: [Text]
Phone: [Text] Mobile: [Text] Fax: [Text] Email: [Text]
Model: [Text] Year: [Text] Color: [Text] Price: [Text]

Vehicle Information

SALES

NOTES

Email Logging

2000-05-25 10:34:20 [Text]
2000-06-01 10:33:08 [Text]

Customer Comments

Full Customer History Trade Information

Email Sent Date: 05/25/2000 Time: 10:10:45 Year: [Text] Mileage: [Text]
Email Sent Date: 05/25/2000 Time: 10:33:39 Make: [Text] Amount Owed: [Text]
Model: [Text]

Credit Application Information

Source: [Text]
Date of Birth: [Text]
Employer: [Text]
Salary: [Text]
Trade-in: [Text]
Loan Amount: [Text]
Down Payment: [Text]

The applicant has submitted required color specimen.
The USPTO has printed only one copy of the specimen,
and extra copies can be produced in-house as needed.

DUPLICATE SPECIMEN

Internet Transmission Date:

2000/06/02

Filing Date:

2000/06/02

Serial Number:

78011048

Nettrak

SQL Lead Tracking Program
Customer Information Page

Sterling McCall Toyota Lead Follow Up Program Microsoft Internet Explorer

File Edit View Favorites Tools Help

Address Links

Select a page: [Dropdown]

GROUP: AUTOMOTIVE INC
Sterling McCall TOYOTA

Darrin Schaefer
Nettrak
by mywebpage.com

Appointments Search Statistics Manual Input Maintenance Check Email

Salesperson: [Dropdown] Inquiry Date 05/25/2000 Time 10:37:40
Status: [Dropdown] Lead Source: AutoByTel
Print This Page

Appointments: [Dropdown] [Dropdown] [Dropdown] [Dropdown] [Dropdown]

Name: [Text] Hm Ph: [Text] Wk Ph: [Text]
Addr: [Text] Cell Ph: [Text] Pager: [Text]
Addr2: [Text] Email: [Text]
City: [Text] State: [Text] Zipcode: [Text]

Vehicle Information

Year: [Text] Make: [Text] Ext Color: [Text] Price: [Text]
Model: [Text] Int Color: [Text] Gross Profit: [Text]

SALES

NOTES

Email Logging

2000-05-25 10:34:20 From: Bill Berman at Sterling McCall Toyota
2000-06-01 10:11:08 From: Bill Berman at Sterling McCall Toyota

Customer Comments

Full Customer History

Trade Information

Email Sent Date: 05/25/2000 Time: 10:10:45 Year: [Text] Message: [Text]
Make: [Text] Amount Owed: [Text]
Model: [Text]

Email Sent Date: 05/25/2000 Time: 10:33:39

Credit Application Information

Source: [Text]
Date of Birth: [Text]
Employer: [Text]
Gender: [Text]
Total Income: [Text]
Annual Income: [Text]
Debt Payment: [Text]

17 Leads Match

Map These Stat These Print These

Peng Chen Xu
peng.chen.xu
Don Haddaway
dnh@lps
Moses Hernandez
Shabean Siddiqui
Courtney Thompson
Brian Gerard Rowan
Laurie Featherston
Pat Dinh
Brenda Wright
Duong Bxan
Abhijit Kalavkar
John Barbo
Dan Hsuon
Juan Martinez
juan.martinez

The applicant has submitted required color specimen.
The USPTO has printed only one copy of the specimen,
and extra copies can be produced in-house as needed.

DUPLICATE SPECIMEN

Internet Transmission Date:


2000/06/02

Serial Number:

78011048

Filing Date:

2000/06/02


**SQL Lead Tracking Program
Customer Information Page**

Sterling McCall Toyota (red Follow Up Program)
Microsoft Internet Explorer

File Edit View Favorites Tools Help
Address Links

12 Leads Match

Peng Chun Xu
 peng.chun.xu
Don Hardaway
 don.hardaway
Miguel Hernandez
 miguel.hernandez
Shahen Suddow
 shahen.suddow
Courtney Thompson
 courtney.thompson
Brian Gerard Rowan
 brian.gerard.rowan
Laurie Featherston
 laurie.featherston
Pat Dinh
 pat.dinh
Brenda Wright
 brenda.wright
Quone Byers
 quone.byers
Abhijit Kalevkar
 abhijit.kalevkar
John Batko
 john.batko
Dan Heston
 dan.heston
Juan Martinez
 juan.martinez

GROUP: AUTOMOTIVE INC
Sterling McCall TOYOTA

NetTrak
 by mywebpacer.com

Appointments Search Statistics Manual Input Maintenance Check Email

Salesperson:

Status:

Appointment:

Name: Hm Ph: Wk Ph:

Addr: Cell Ph: Pager:

Addr 2:

City: State: Zipcode:

Year: Make: Est Color: Price:

Model: Int Color: Gross Profit:

Inquiry Date 05/25/2000 Time 10:37:40

Lead Source: AutoByTel

S A L E S

N O T E S

Email Logging

2000-05-25 10:34:20 From: B. Ramirez To: Don Hardaway

2000-06-01 10:11:08 From: B. Ramirez To: Don Hardaway

Customer Comments

Full Customer History

Email Sent Date: 06/01/2000 Time: 10:10:45

Email Sent Date: 06/05/2000 Time: 10:33:39

Trade Information

Year: Mileage:

Make: Amount Owed:

Model:

Credit Application Information

Source:

Date of Birth:

Employer:

Salary:

Financial Inst:

Other Account:

Other Payment:

The applicant has submitted required color specimen. The USPTO has printed only one copy of the specimen, and extra copies can be produced in-house as needed.